

<p>1 BY MR. STAR:</p> <p>2 Q. Is that right?</p> <p>3 A. Correct.</p> <p>4 Q. Besides this communication with</p> <p>5 Mr. Van Leeuwen, did you have any other</p> <p>6 information that caused you to believe that</p> <p>7 signing the license agreement was simply to</p> <p>8 license or lock in the price for the</p> <p>9 additional 40 CRM users?</p> <p>10 MR. LAMBERT: Objection. This is to</p> <p>11 Otto individually.</p> <p>12 BY MR. STAR:</p> <p>13 Q. Sure.</p> <p>14 A. It's my belief that by this time,</p> <p>15 SAP knew that this would not handle the number</p> <p>16 of users, and it was a -- a way for them to</p> <p>17 limit their liability. That's my personal</p> <p>18 impression.</p> <p>19 MR. STAR: Can you read back my</p> <p>20 question?</p> <p>21 (Whereupon, the court reporter read</p> <p>22 back the requested testimony.)</p> <p>23 BY MR. STAR:</p> <p>24 Q. Can you answer that question,</p> <p>25 sir?</p>	<p>Page 109</p> <p>1 A. Correct.</p> <p>2 Q. What information did you uncover</p> <p>3 prior to December 23rd, 2005 about declining</p> <p>4 information on the number of users?</p> <p>5 A. I think that's the first time I</p> <p>6 saw a reference where there was a distinction</p> <p>7 made between number of employees and maximum</p> <p>8 users.</p> <p>9 Q. And what specifically did you</p> <p>10 see?</p> <p>11 A. I don't recall the exact</p> <p>12 information.</p> <p>13 Q. Okay. Prior to seeing this</p> <p>14 information on the internet before</p> <p>15 December 23rd, 2005, what was Hodell's belief</p> <p>16 about the number of users that Business One</p> <p>17 could support?</p> <p>18 A. Five hundred.</p> <p>19 Q. Five hundred users or employees?</p> <p>20 A. Employees have nothing to do with</p> <p>21 it. It's users.</p> <p>22 Q. Number of users --</p> <p>23 A. Yeah.</p> <p>24 Q. -- in the organization?</p> <p>25 A. I don't understand why number of</p>
<p>Page 110</p> <p>1 A. I thought I did.</p> <p>2 THE WITNESS: Could you please read it</p> <p>3 again?</p> <p>4 THE REPORTER: How do you -- is it</p> <p>5 Mr. Van -- how do you pronounce --</p> <p>6 THE WITNESS: Van Leeuwen.</p> <p>7 THE REPORTER: Okay.</p> <p>8 (Whereupon, the court reporter read</p> <p>9 back the requested testimony.)</p> <p>10 MR. LAMBERT: Is my objection noted on</p> <p>11 there?</p> <p>12 THE REPORTER: (Nods head.)</p> <p>13 MR. LAMBERT: Okay.</p> <p>14 THE WITNESS: Am I answering as an</p> <p>15 individual?</p> <p>16 BY MR. STAR:</p> <p>17 Q. Yes.</p> <p>18 A. We had gone on the internet and</p> <p>19 seen some indication that the number of users</p> <p>20 being -- the limit on the number of users was</p> <p>21 declining, the number of users.</p> <p>22 Q. When was this?</p> <p>23 A. Sometime during '05 or '04.</p> <p>24 Q. Prior to December 23rd of 2005,</p> <p>25 right?</p>	<p>Page 110</p> <p>1 employees limits a system, if they're not</p> <p>2 users.</p> <p>3 Q. Okay. So prior to you looking</p> <p>4 for and finding information on the internet,</p> <p>5 which also occurred before December 23rd,</p> <p>6 2005, you're telling me it was Hodell's belief</p> <p>7 that Business One could support up to 500</p> <p>8 users?</p> <p>9 A. We were told that.</p> <p>10 Q. By whom?</p> <p>11 A. By LSi and by American Express.</p> <p>12 Q. Who at LSi told you that -- that</p> <p>13 Business One could support up to 500 users?</p> <p>14 A. Dale Van Leeuwen.</p> <p>15 Q. When did he tell you that?</p> <p>16 A. December 3rd, 2003.</p> <p>17 Q. How do you remember that date so</p> <p>18 specifically?</p> <p>19 A. At that point -- at that meeting,</p> <p>20 I stated to American Express and Dale Van</p> <p>21 Leeuwen, who was on a teleconference with us,</p> <p>22 the other -- the American Express people were</p> <p>23 in our facility. We had a ten-year compounded</p> <p>24 growth rate at that point that was in excess</p> <p>25 of ten percent per year. We were -- if we</p>

<p style="text-align: right;">Page 113</p> <p>1 continued that pace, in the next ten years, we 2 would exceed 300 users, with productivity 3 improvements promised, and all the literature 4 that we had and efficiencies, 300 users would 5 carry us. We did not want to be doing an 6 implementation of software that would not be 7 viable for the next decade. And I was assured 8 by both parties that 300 users is -- the 9 system is capable of supporting 300 users.</p> <p>10 Q. Which --</p> <p>11 A. I said I would not proceed unless 12 that was -- assurance was made.</p> <p>13 Q. Well, which was it, that</p> <p>14 Mr. Van Leeuwen told you it was 500 users or 15 300 users?</p> <p>16 A. He said he had information that 17 indicated 500.</p> <p>18 Q. Okay. What specific information 19 did he tell you he had?</p> <p>20 A. A SAP document.</p> <p>21 Q. What SAP document?</p> <p>22 A. I don't --</p> <p>23 Q. Did you ask for that document?</p> <p>24 A. We subsequent -- we had documents 25 of our own that indicated that, 500 employees.</p>	<p style="text-align: right;">Page 115</p> <p>1 A. It said 500 employees.</p> <p>2 Q. Five hundred employees. Well, 3 you just said earlier, sir, that you don't 4 understand what the number of employees has to 5 do with the number of users. What did you 6 mean by that?</p> <p>7 A. No. What I said was, nonuser 8 employees have nothing to do with capacity, 9 therefore, a logical assumption would be that 10 the number of employees specified that define 11 capacity of the system is users.</p> <p>12 Q. I see. So when you would read in 13 a document that Business One could support an 14 organization up to 500 employees, you just 15 assumed that that meant 500 users; is that 16 right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. That's an awful big 19 assumption to make without further 20 investigating; wouldn't you agree?</p> <p>21 A. I did investigate it.</p> <p>22 Q. With whom?</p> <p>23 A. I confronted SA -- American 24 Express and IBiS, and asked for specific 25 confirmation that it could handle 300 users.</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Okay. We're referring right now 2 to a conversation that you had with 3 Mr. Van Leeuwen on December 3rd, 2003, that 4 also involved American Express, who you said 5 was at your actual office?</p> <p>6 A. Yes.</p> <p>7 Q. Mr. Van Leeuwen was on a 8 conference --</p> <p>9 A. Yes.</p> <p>10 Q. -- right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Your testimony is that 13 Van Leeuwen says during that conversation that 14 Business One can support up to 500 users, and 15 you also said, I believe, that Van Leeuwen 16 referenced a document from SAP that had that 17 information, right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. My question to you is, did 20 you obtain that document from Mr. Van Leeuwen 21 at any time prior to December 23rd, 2005?</p> <p>22 A. I believe we already had such a 23 document.</p> <p>24 Q. You had a document that actually 25 said Business One can support 500 users?</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. And what did they give you as 2 specific confirmation, sir?</p> <p>3 A. It will handle 300 users.</p> <p>4 Q. That's all they said?</p> <p>5 A. Correct.</p> <p>6 Q. Who said it?</p> <p>7 A. I -- Dale Van Leeuwen said he had 8 a document that talked about 500 users, but 9 300 users was within the system capability.</p> <p>10 Q. Well, I think you just said 11 that Dale Van Leeuwen was referencing a 12 document that said that it could handle up to 13 500 employees, not users, correct?</p> <p>14 A. At that time, he said users, but 15 we had a document that said employees.</p> <p>16 Q. But you just assumed that 17 employees meant users, right?</p> <p>18 A. That's a very logical assumption.</p> <p>19 Q. You didn't actually contact 20 anybody at SAP?</p> <p>21 A. Yes, I did.</p> <p>22 Q. An employee --</p> <p>23 A. The SAP business partner.</p> <p>24 Q. Let me finish the question. You 25 did not actually contact any person employed</p>

<p>1 Q. Is there any representation in 2 that document that you believe was false when 3 it was made? 4 A. I don't know. 5 Q. Sorry? 6 A. I don't know. 7 Q. You don't know? 8 A. No. 9 Q. Okay. As we sit here today, is 10 there anything in this document that you 11 believe was false at the time that you 12 received it? 13 A. Not at the time I received it. 14 Q. Okay. Is it your contention, or 15 Hodell's contention, that there's any 16 information in this document that you believe 17 constitutes a misrepresentation by SAP about 18 the Business One software? 19 MR. LAMBERT: Objection. 20 THE WITNESS: Don't know. I answered. 21 BY MR. STAR: 22 Q. Oh, I'm sorry. I didn't hear 23 you. 24 A. I don't know. 25 Q. Okay. Paragraph 20, Hodell</p>	<p>Page 137</p> <p>1 number of users that could be supported under 2 Business One; is that right? 3 A. Yes. 4 Q. Okay. 5 A. As a business partner. 6 Q. What is the basis for your belief 7 that American Express supplied false 8 information about the number of users? 9 A. We were told at that meeting 300 10 users, and when we started with 120 users, the 11 system would not handle it. 12 Q. Okay. You're referring to the 13 December 3rd, 2003 meeting? 14 A. Correct. 15 Q. Okay. Was there any literature 16 or any -- any writing given to you by American 17 Express that Hodell presently contends 18 constitutes a misrepresentation? 19 MR. LAMBERT: Objection. 20 THE WITNESS: I don't know. 21 BY MR. STAR: 22 Q. Paragraph 21, you reference the 23 document attached as Exhibit C to the 24 complaint, which you described as the Business 25 One white paper. And in that same paragraph,</p>
<p>Page 138</p> <p>1 alleges that at all times relevant to this 2 action, American Express Tax and Business 3 Services, Inc. acted as the authorized agent 4 and representative of its disclosed 5 principals, the SAP Defendants. 6 What evidence do you have, sir, that 7 American Express was acting as an authorized 8 agent of the SAP Defendants? 9 A. We supplied documents that had 10 showed them as a business partner of SAP. 11 Q. Showed American Express as a 12 business partner? 13 A. Correct. 14 Q. Okay. Is it presently Hodell's 15 contention that it received false information 16 that constitutes a misrepresentation through 17 American Express? 18 A. On the number of users? 19 Q. That you believe -- 20 A. Yes. 21 Q. -- there was a false rep -- 22 A. Yes. 23 Q. Let's be clear. You -- Hodell 24 presently believes there was a false 25 representation by American Express as to the</p>	<p>Page 140</p> <p>1 you contend that Ms. Vitantonio, 2 V-I-T-A-N-T-O-N-I-O, of American Express sent 3 you that document on October 16, 2003. 4 If you flip to Exhibit C of the complaint, 5 is that the document you recall receiving on 6 October 16th, 2003? 7 A. Which exhibit is that? 8 Q. C. 9 A. C. Correct. 10 Q. Okay. Is there any 11 representation or statement in this document, 12 this is the SAP Business One white paper 13 attached as Exhibit C, that Hodell currently 14 contends constitutes a misrepresentation 15 either by American Express or SAP concerning 16 the Business One software? 17 MR. LAMBERT: Objection. 18 THE WITNESS: Since we never 19 implemented their software, I have no way of 20 telling you. 21 BY MR. STAR: 22 Q. So to be clear, as we sit here 23 today, Hodell does not believe that there is 24 any information that was represented to it 25 through Exhibit C to the complaint, that it --</p>

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1 second.
2 (Whereupon, an off-the-record discussion
3 was held at 4:13.)
4 (Whereupon, the deposition was continued
5 until the following day.)

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1 CERTIFICATE OF THE REPORTER
2 I, Angela A. O'Neill, a Registered Professional
3 Reporter and Notary Public, authorized to administer oaths and to
4 take and certify depositions, do hereby certify that the
5 above-named witness was by me, before the giving of their
6 deposition, first duly sworn to testify the truth, the whole
7 truth, and nothing but the truth to questions propounded at the
8 taking of the foregoing deposition in a cause now pending and
9 undetermined in said court.

10 I further certify that the deposition above-set forth
11 was reduced to writing by me by means of machine shorthand and was
12 later transcribed from my original shorthand notes; that this is a
13 true record of the testimony given by the witness; and that said
14 deposition was taken at the aforementioned time, date, and place,
15 pursuant to notice or stipulations of counsel.

16 IN WITNESS WHEREOF, I have set my hand and seal this
17 14th day of February, 2012.

Angela A. O'Neill

20 _____
21 Angela A. O'Neill, RPR
22 My Commission Expires: Aug. 10, 2012
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